

REMARKS

Amendments to the Specification

The specification has been amended herein to update the Related Applications paragraph and to reference the various parts of Figures 1-26. No new matter has been added.

Amendments to the Claims

Claims 26, 28-29, 34-35, and 55-70 are pending herein. Claims 26, 30, 34, 36 and 38 have been amended herein. Support for these amendments can be found throughout the specification, for example, at page 18, lines 3-9 and in the claims as originally filed. Claims 39-54 have been canceled herein. New Claims 55-70 have been added herein. Support for these claims can be found throughout the specification and in claims 26-38 as originally filed. No new matter has been added.

Examination of new Claims

Applicants respectfully request that new Claims 55, 57-58 and 66-67 be examined herein as drawn to an elected invention. The remaining new claims will be withdrawn awaiting possible rejoinder.

Rejoinder

It is Applicants belief that Claims 26, 28-29, 34-35, 55, 57-58 and 66-67 are in condition for allowance and, therefore, respectfully request that withdrawn Claims 27, 30-33, 36-38, 56, 59-65 and 68-70 be rejoined.

Objections to Specification

The Related Applications paragraph has been updated and the Brief Description of the Drawings has been amended as suggested by the Examiner. Reconsideration and withdrawal of these objections are respectfully requested.

Furthermore, the title has been objected to as not descriptive. Applicants respectfully disagree and point out that this title is identical to the title in US patent 7,262,286. Reconsideration and withdrawal of the objection are respectfully requested.

Rejection of Claims 26, 28-29, 34-35, 39-40 and 47-49 Under 35 U.S.C. §112, First Paragraph

Claims 26, 28-29, 34-35, 39-40 and 47-49 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Specifically, particular immunostimulatory dinucleotides CpA, TpA or TpG as embraced by the generic formula 5-pyrimidine-purine-3', were not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claims 39-40 and 47-49 have been canceled herein rendering the rejection of these claims moot. The remaining claims have been amended herein to recite an immunostimulatory dinucleotide of formula C*pG or C*pG* wherein C* is a non-natural pyrimidine nucleoside and G is a natural and G* is a non-natural purine nucleoside. As the application clearly supports the claims as amended, the instant rejection is rendered moot. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claims 26, 28-29, 34, 39-40 and 47-48 Under 35 U.S.C. §102(e) and (b)

Claims 26, 28-29, 34, 39-40 and 47-48 are rejected under 35 U.S.C. §102(e) as being anticipated by Schwartz et al (US Patent 6,562,798; hereinafter “the ‘798 patent”).

Without conceding to the correctness of the Examiner’s position but in order to expedite prosecution of the instant application, Claims 26 and 34 have been amended herein to incorporate the subject matter in parent application (now US 7,262,286) found patentable over the ‘798 patent. Applicants reserve the right to prosecute the deleted subject matter at a later date or in a timely filed continuation application. Furthermore, Schwartz fails to teach the subject matter of new claims 55, 57-58 and 66-67.

Accordingly, the claimed subject matter is patentable over Schwartz. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 26, 28-29, 34, 39-40 and 47-48 are rejected under 35 U.S.C. §102(b) as being anticipated by Schwartz et al (WO 99/62923; hereinafter “the ‘923 publication”).

The ‘923 publication is identical to the ‘798 patent. Thus, for the reasons discussed above, the ‘923 publication does not anticipate the instant invention. Reconsideration and withdrawal of the rejection are respectfully requested.

Rejection of Claims 26, 28-29, 34-35, 39-40 and 47-49 Under 35 U.S.C. §103(a)

Claims 26, 28-29, 34-35, 39-40 and 47-49 are rejected under 35 U.S.C. §103(a) as being unpatentable over the ‘798 patent or the ‘923 publication in view of Krieg et al (US Patent 6,207,646; hereinafter “Krieg”)

For the reasons discussed above, the ‘798 patent and the ‘923 publication do not teach or suggest the claimed invention. Krieg fails to provide that which the ‘798 patent and the ‘923 publication lacks. Reconsideration and withdrawal of the rejection are respectfully requested.

Double Patenting

Claims 26, 28-29, 34-35, 39-40 and 47-49 are rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over Claim 1 of US Patent No. 6,426,334 in view of Schwartz and Krieg.

Applicants respectfully disagree. Claim 1 of US Patent 6,426,334 claims a different composition than the claims of the instant application. Furthermore, for the reasons discussed above, the ‘798 patent, the ‘923 publication and Krieg do not provide that which the ‘798 patent and the ‘923 publication lacks. Reconsideration and withdrawal of the rejection are respectfully requested.

Claims 26 and 34-35 are provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over Claims 2, 5, 7 and 11-13 of copending US Application No. 11/174,002.

As stated by the Examiner, this is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. Please note that U.S. Application No. 11/174,002 is the later filed applications.

Therefore, if this provisional double patenting rejection is the only remaining rejection in the application, Applicants request that the Examiner withdraw the rejection in the instant [earlier filed] application thereby permitting this application to issue without need of a terminal disclaimer. (See MPEP §804(I)(B)). Applicants will then consider filing a Terminal Disclaimer or take any other action deemed necessary in the later filed, copending application.

CONCLUSION

In view of the above amendments and remarks, it is believed that all claims are in condition for allowance, and it is respectfully requested that the application be passed to issue. If the Examiner feels that a telephone conference would expedite prosecution of this case, the Examiner is invited to call the undersigned.

Respectfully submitted,

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